HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

C482 990/2001

Manit Arora

& others

Vs.

State of Uttaranchal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 22.12.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 990 of 2001

1. Manit Arora s/o Sri Prem Arora
   R/o Dalanwala, Dehradun
2. Mukesh Sharma son of Sri Rajvir
   R/o Dayalbagh P.S. New Agra
   District Agra, at present residing at Hall Upper Bazar
   District Rudraprayag ..... Applicants

Versus

State of Uttaranchal ..... Respondent

Dated: 22.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Akhilesh Kalra and Sri Paresh Tripathi counsel for the applicants and learned A.G.A. for the respondent.

By the present application under section 482 Cr.P.C. the applicants have prayed for quashing of the entire proceedings of criminal case No. 996 of 2001 State vs. Mukesh Sharma under section 60/63 Excise Act and 348 (3) of Excise Rules.

Briefly stated according to the prosecution case a raid was conducted on 2.4.2001 in the house of Sri Virendra Dutt Nautiyal and Sri Arun Dutt Nautiyal and 4236 bottles, 1176 half bottles and 1200 quarters liquor was recovered. F.I.R. to this effected was lodged on 3.4.2001. The police after investigating the case submitted charge sheet against the applicants before the Chief Judicial Magistrate, Rudraprayag. The Chief Judicial Magistrate after taking cognizance on the charge sheet registered criminal Case No. 996 of 2001, State vs. Mukesh

Sharma under section 60/63 of Excise Act and 348 (3) of Excise Rules.

According to the applicants, applicant No. 1, Manit Arora was granted licence in 2001-2002 under FL-5 category to sell Indian make foreign liquor for Rudraprayag District. For the previous years i.e. 2000-01 was given to U.P. Sahkari Chini Mills Sangh, Lucknow. The Rudraprayag unit of U.P. Sahkari Chini Mills Sangh moved an application on 1st April 2001 to the Excise Officer, Rudraprayag making a request that the applicant (Manit Arora) wishes to purchase the left over liquor. The value of which has been paid by the applicant and the applicant has also agreed to pay surcharge. The District Excise Officer, Rudraprayag on the application moved by the Incharge, U.P. Sahkari Chini Mills Sangh, Lucknow, recommended the transfer of the said left over stock in favour of the applicant and the applicant was directed to deposit the surcharge on 1st April 2001. The house of Sri Virendra Dutt Nautiyal which was being used as godown by the earlier licensee for keeping liquor was also taken over the applicant on rent for keeping stock of liquor in it. On 4th April 2001, the applicant deposited Rs.10,000/- and District Magistrate, Rudraprayag permitted to use the house of Sri Virendra Dutt Nautiyal as godown.

As already stated above, the applicant no. 1 had agreed with the existing licensee to purchase the entire balance liquor which was remaining on 31st March, 2001 and a proposal to the above effect had already been submitted. On 1st April 2001 being Sunday the formal orders could not be issued on 1st April 2001 but as the same had been accepted it had to be deemed as provisional sanction and, therefore, unless there was specific denial of the arrangement which the applicant had entered into

the liquor which he has taken over could not be deemed to be unauthorised.

The District Magistrate, Rudraprayag has permitted godown to the applicant vide order dated April 4, 2001, extract of which is being quoted as under:

:आदेशः

आबकारी आयुक्त, उत्तरॉचल शासन देहरादून के पत्र संख्या

२१६५–२२०७/सात–लाइसेन्स २००१–२००२ मार्च ३१, २००१ के क्रम में श्री मनित अरोडा अनुज्ञापी एफ0एल0 –५ रूद्रप्रयाग को उनके प्रार्थनापत्र दिनांक १.४.२००१ के अनुसार स्थान रूद्रप्रयाग में विदेशी मन्दिरा हेतु गोदान की अनुमति प्रदान की जाती है।

गोदाम की चौदही निम्न प्रकार है

भवन स्वामी का नाम	श्री विरेन्द्रदत्त नौटियाल पुत्र श्री बॉके दत्त नोटियाल निवासी रूद्रप्रयाग।
चौदही	पूरब – भवन स्वामी के अन्य कमरे
	पश्चिम – खाली स्थान
	उत्तर – सुरेन्द्र दत्त नौटियाल का मकान
	दक्षिण – राजेन्द्र दत्त नोटियाल का मकान

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जिलाधिकारी, रूद्रप्रयाग

Aforesaid order of the District Magistrate, Rudraprayag clearly shows that on the application of Manit Arora to whom licence of foreign liquor for the year 2001-02 in the Rudraprayag District was allotted was given permission to use the house of Sri Virendra Dutt Nautiyal at Rudraprayag.

It is noteworthy that earlier the aforesaid house was being used as godown by U.P. Sugar Mill Sangh who was the licensee for the year 2000-2001. The stock of liquor was transferred to

the applicants on 1.4.2004. Soon thereafter they moved the District Magistrate, Rudraprayag for permitting them to use the house of Sri Virendra Nautiyal as godown to keep the stock and they also deposited Rs.10,000/- as licence fee. The District Magistrate has not issued permit then and there and it was issued on 4.4.2001. However, the Police has conducted raid on the said godown on 2.4.2001 and recovered the stock of liquor.

A perusal of the F.I.R. dated 2.4.2001 which has been lodged by the Police at 11.00 PM after the alleged raid shows that the police party conducted raid on the godown after receiving information from an unnamed informant. Rudraprayag is a District Head Quarter and admittedly District Magistrate and Excise Officers were present there but the S.O. of Police Station, Rudraprayag did not care to inform the District Magistrate before conducting the raid or soon thereafter and thus violated the provisions of Section 56 of the U.P. Excise Act.

Section 56 of U.P. Excise Act reads as under:

> *Every officer of the police, salt, opium and land revenue departments shall be bound to give immediate information to an officer of the Excise Department of all breaches of any of the provisions of this Act which may come to his knowledge, and to aid, any Officer of the Excise Department inc carrying out the provisions of this Act upon request made by such officer.*

There is nothing on record to show that the Police Officer conducting the raid has taken assistance of the Officers of Excise Department or the District Magistrate, who was also the District Excise Officer was informed after the raid. If the Police Officers have informed the District Magistrate or the Excise Officers in this regard, the position might be different and they

would certainly be made aware about the license of foreign liquor issued in the name of the applicant and his application vfor permission of godown which was pending before the District Magistrate. Although on 2nd April 2001, when the Police conducted raid, permit of godown has not been issued to the applicant no. 1 and it was issued on 4.4.2001 but by applying the doctrine of Eclipse the order passed in the instant case has become operative on the date of the application moved by applicant no.1 for permit of godown and fee was also deposited.

The Apex Court in the case Dularey Lodh vs. 3rd Addl. District Judge, Kanpur, 1984 (2) A.R.C. 82 has observed as under:

"*The matter first came up for consideration before this Court in Bhikaji Narain Dhakras v. State of M.P. (1955) 2 S.C.R. 589 where in a similar situation the doctrine of eclipse was fully applied and the Court observed thus:*

The true position is that the impugned law became, as it were, eclipsed, for the time being, by the fundamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity..... Such laws were not dead for all purposes. They existed for the purposes of pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens.... In our judgment, after the amendment of clause (6) of Article 19 on June 18, 1951, the impugned Act ceased to be unconstitutional and became revivified and enforceable against citizens as well as against non-citizens. . . . But after the amendment of clause (6)

the impugned Act immediately became fully operative even as against the citizens.

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Once the Bar has been placed by the 1972 Act is removed, by virtue of the doctrine of eclipse the decree will revive and become at once operative and executable."

The above discussion shows that the applicant Sri Manit Arora was the licensee of the foreign liquor in Rudrapyrag District for the year 2001-02. The remaining stock of liquor was transferred by him from the earlier licensee i.e. U.P. Cooperative Sugar Mills on 1.4.2001 for which permission has been granted by the District Magistrate. The applicant on the same day deposited required fee of Rs.10,000/- and has applied to the District Magistrate for sanction of the same godown in the house of Sri Virendra Dutt Nautiyal which was being used by earlier licensee. His application was pending disposal before the District Magistrate but the S.O. Police Station, Rudraprayag without informing the District Magistrate or the Excise officer conducted raid on the godown and seized the liquor in the midnight of 2.4.2001 and, therefore, taking into consideration the doctrine of eclipse is fully applicable to the facts of the present case. Even assuming that the order was subsequently passed by the District Magistrate, the possession cannot be said to be unauthorised as prior intimation was given and subsequently the same was approved.

Apart from the above, once the directions have been issued for the remaining stock of the previous year and further or the godown, and the applicant no. 1 has applied for permit

of godown, well within time. The action taken by the Police authorities cannot nullify the order issued by the District Excise Officer, Rudraprayag.

In ***M/s Pepsi Foods Ltd. & another Vs. Special Judicial Magistrate and others 1997 (2) Supreme (Cr.) 498,*** it has been held as under:-

> *"2. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to being only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complainant and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in brining charge home to the accused. It is not that the magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any*

offence is prima facie committed by all or any of the accused.”

In view of above, the petitioners have not committed any offence punishable under U.P. Excise Act or Rules. The entire prosecution of the applicants is an abuse to the process of law. Therefore, the proceedings of Criminal case No. 996 of 2001, State vs. Mukesh Sharma, pending in the Court of Chief Judicial Magistrate, Rudraprayag under section 60/63 of the Excise Act, and Rule 348 (3) of Excise Rules against the applicant are quashed.

Accordingly, the application under section 482 Cr.P.C. is allowed.

Dated: 22.12.2006 **Rajesh Tandon, J.**

*Dhyani